

BEFORE THE
DIVISION OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JAMES WALKER GRAY, M.D.
License No. C-30715

Respondent.

No. D-2425


N-14349

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Medical Quality
Assurance as its Decision in the
above-entitled matter.

This Decision shall become effective on September 11, 1981.

IT IS SO ORDERED August 12, 1981.


MILLER MEDEARIS, Secretary-Treasurer

BEFORE THE
DIVISION OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. D-2425
JAMES WALKER GRAY, M.D.)	
License No. C-30715)	N-14349
)	
Respondent.)	

PROPOSED DECISION

This matter came on for hearing before Robert R. Coffman, Administrative Law Judge of the Office of Administrative Hearings, on November 1, 2, 13 & 14, 1980 in Tracy, California and again on March 26, 1981 in Los Angeles, California.

The complainant was represented by Michael H. Fabian, Deputy Attorney General.

Respondent James Walker Gray appeared in person and was represented by Edward Charles Ash, his attorney.

Evidence was received the hearing was closed and the matter was submitted. The Administrative Law Judge certifies this decision and recommends its adoption.

FINDINGS OF FACT

I

Robert Rowland made the First Amended Accusation in his official capacity as the Executive Director of the Board of Medical Quality Assurance.

II

On or about November 8, 1968, respondent James Walker Gray was issued physician's and surgeon's certificate No. C-30715 by the board to practice medicine in the State of California. At all times mentioned, respondent was and is a licensed physician in the State of California.

III

Eskatrol is a dangerous drug pursuant to Business and

Professions Code section 4211(k) and a Schedule II Drug pursuant to Health and Safety Code section 11055.

IV

The following are dangerous drugs pursuant to Business and Professions Code section 4211(k) and are Schedule III Drugs pursuant to Health and Safety Code section 11056:

1. Tylenol-Codeine
2. Tylenol IV
3. Paregoric

V

The following are dangerous drugs pursuant to Business and Professions Code section 4211(k):

1. Lasix
2. Nystatin ointment
3. Tetracycline
4. ProPenicillin
5. Valium, also known as Diazepam

VI

On the specific dates as set forth below respondent James Walker Gray prescribed the following controlled substances and dangerous drugs:

	<u>Date</u>	<u>Rx #</u>	<u>Drug</u>	<u>Amount</u>
1.	2/10/78	22318	Valium	10 mgs., 100 each
2.	2/10/78	22320	Tylenol #4	170 each
3.	2/10/78	22319	Lasix	40 mgs., 100 each
4.	2/10/78	22321	Paregoric	No amount given
5.	4/4/78	22575	Paregoric	2 oz., plus 16 oz.
6.	4/24/78	22669	Paregoric	1 pt.
7.	5/9/78	22777	Paregoric	1 pt.
8.	7/1/78	23148	Paregoric	2 pt. Kaopectate w/this
9.	7/2/78	23153	Nystatin Ointment	15 grains
10.	7/20/78	23149	Lasix	40 mgs., 100 each

	<u>Date</u>	<u>Rx #1</u>	<u>Drug</u>	<u>Amount</u>
11.	7/20/78	23154	Tetracycline	500 mgs., #20
12.	7/20/78	23156	Pro Penicillin	#6 Tubex
13.	7/31/78	23157	Paregoric	2 pt.
14.	8/24/78	168374	Eskatrol	SA Spanules #50
15.	8/24/78	168373	Tylenol w/ Codeine	1 gr. #100
16.	8/24/78	168372	Valium	10 mgs., #100
17.	2/27/79	175382	Valium	10 mgs., #100
18.	2/27/79	175382	Tylenol #4	1 gr. #150

VII

Respondent was listed as the patient on the first 13 prescriptions specified in Finding VI above. Respondent requested a Tracy hospital pharmacist to fill these 13 prescriptions. The requests were made orally, some in person and some by telephone, or by a note delivered to the pharmacist. Respondent did not tell the pharmacist the name of the patient for whom the prescriptions were issued, except for prescription #5. The pharmacist reasonably believed that respondent was the patient and he so indicated on the prescription forms. Respondent told the pharmacist that he (respondent) was the patient on prescription #5, the April 4, 1978 Paregoric.

Prescription #5 was filled out by respondent, except for patient's name and address. Respondent signed and placed his BNDD number on prescriptions 1, 2, 3, 4, 6, and 7, with the pharmacist filling out the remainder of these prescriptions. The pharmacist placed all of the writing on prescriptions 8-13 at the direction of respondent (respondent did not expressly state he was the patient except for #5).

Prescriptions 14-18 (numbers 17 & 18 were contained on one prescription form) were filled by a Stockton hospital pharmacist. Numbers 14, 15 and 16 were filled out by respondent, numbers 17 and 18 by the pharmacist. All of these prescriptions listed Ann Roth of Walnut Creek as the patient.

VIII

Respondent had all of the prescriptions specified in Finding VI filled at the hospital pharmacies. He obtained from the dispensing pharmacists all such dangerous drugs and controlled substances.

The 6 paregoric prescriptions were not prescribed on official triplicate blanks and the paregoric was not combined with other medicinal ingredients. Respondent may have combined the paregoric with another ingredient after he obtained it from the pharmacy. However, Section 11169 must be construed as

requiring the pharmacist to combine the paregoric with other ingredients, or that the prescription issued by the physician must so provide. Any other construction would permit the patient to combine the ingredients, a result obviously contrary to Section 11169. In addition, Section 11169 contemplates that the combining of ingredients must appear on the written prescription form in order for there to be a written record that the triplicate form is not required. Evidence established that respondent did not direct the pharmacist, orally or in writing, to combine the paregoric with any other ingredient.

Respondent prescribed the controlled substance Paregoric, prescription #5, for himself.

Respondent issued the above 18 prescriptions while he was practicing as an anesthesiologist in Tracy, California.

IX

Respondent graduated from medical school in 1967, took an orthopedic residency and training and later completed a residency in anesthesiology.

Respondent practiced in Southern California from 1969 until he moved to Tracy in October 1977.

He currently practices in Southern California.

X

Complainant contends that respondent administered the above dangerous drugs and controlled substances to himself. Respondent states that he delivered the medications to two friends, Ann Roth of Walnut Creek and Jacqueline Montgomery of the Long Beach area.

Respondent and Roth were close friends from 1967 to approximately 1979. The relationship was intimate until approximately 1977.

Orthopedic surgery was performed on Roth in 1969, 1971 and 1973. Respondent assisted in the 1969 and 1971 surgeries. He prescribed and obtained medication for Roth, including Tylenol, Valium, Codeine and anti-fungus ointment, for several years after 1971. Roth suffered from neck and back pain, as well as hypertension and excessive use of alcohol.

Montgomery and respondent have been close personal friends since 1968. They have taken several overnight trips together. Respondent has provided medication to Montgomery for an illness that she and respondent contacted while in Mexico, diagnosed by respondent as shigellosis.

It was not established that respondent administered to

himself the medications specified in Finding VI.

Respondent did provide medication to Roth and Montgomery at various times after 1970.

Evidence did not establish what respondent did with the medications specified in Finding VI. He obtained said medication from the pharmacist. How he thereafter disposed of it was not established by the evidence.

XI

Respondent wrote prescriptions for dangerous drugs in 1978 and 1979 for a person not under his treatment for a pathology. The prescriptions, except for Nos. 14-18, did not contain the name of any patient except respondent. Assuming that respondent gave the medications to Roth and Montgomery, he did not write prescriptions for them. Even assuming that respondent gave the medications to Roth and Montgomery and that such constitutes "prescribing", evidence established that in 1978 and 1979 Roth and Montgomery were not under his care and treatment for a pathology. They were close personal friends, not patients.

XII

Prescriptions numbered 1-13 were false or fictitious within the meaning of Health and Safety Code Section 11157 in that respondent did not specify the name of the patient except as to prescription No. 5.

XIII

Respondent obtained controlled substances in violation of Health and Safety Code Section 11173(a) and (b) in that he did not specify the name of the patients except as to prescription No. 5; by virtue of his obtaining controlled substances prescribed for another (prescriptions 14, 15, 18), prescribing for himself (prescription 5), prescribing for persons for whom he was not treating. A physician may obtain controlled substances by various means authorized by law and provide them to a patient. The physician may not obtain these substances through a prescription and furnish them to a patient. The furnishing of the drugs to the patient, pursuant to a prescription, is performed by the pharmacist.

XIV

It was not established that respondent failed to make and keep records, or to preserve records, for the prescriptions described herein.

XV

Respondent was convicted of driving while intoxicated, Vehicle Code Section 23102, in June 1973 and April 1979.

The 1979 offense was "expunged" pursuant to Section 1203.4 of the Penal Code in November 1980.

Respondent does not consume alcoholic beverages to the extent that such use impairs his ability to practice medicine. It was not established that he did so in the past. Any past occasion of excessive drinking was during a period that he was not on duty or scheduled for duty.

XVI

Complainant moved to dismiss paragraph XVII of the first Amended Accusation.

DETERMINATION OF ISSUES

I

Cause was established for discipline under Sections 11154 (Finding XI), 11157 (Finding XII), 11169 (Finding VIII), 11173(a) and (b) (Finding XIII), and for prescribing Paregoric to himself (11170 and B & P 2390), of the Health and Safety Code in conjunction with Sections 2361 and 2391.5 of the Business and Professions Code.

II

Cause for discipline was not established under Paragraphs XVII and XVIII of the Accusation.

It was not established respondent violated Health and Safety Code Sections 11190 and 11191.

It was not established that respondent administered a controlled substance to himself.

Violations of Health and Safety Code Section 11170 and Business and Professions Code Section 2390 were not established except for the prescribing of Paregoric as specified in Determination I and Finding VIII.

ORDER

Respondent's license is revoked provided, however, the execution of the order of revocation is stayed and respondent is placed on probation for five years on the following terms and conditions:

1. As part of probation, respondent is suspended from the practice of medicine for thirty (30) days beginning the effective date of this decision.

2. Respondent shall not prescribe, administer, dispense, order, or possess (except as prescribed, administered, or

dispensed to respondent by another person authorized by law to do so) controlled substances as defined in the California Uniform Controlled Substance Act, except as may be necessary for hospital in-patients he is treating or attending as an anesthesiologist.

3. Respondent shall abstain completely from the personal use of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined by Section 4211 of the Business and Professions Code, except those prescribed, administered, or dispensed to respondent by another person authorized by law to do so.

4. Within ninety (90) days of the effective date of this decision, respondent shall submit to the Division for its prior approval, a program of approved Category 1, Continuing Medical Education, related to the violations found in the decision. The exact number of hours and the specific content of the program shall be determined by the Division or its designee and shall not total less than twenty-five nor more than seventy-five hours per year. This program shall be in addition to the Continuing Medical Education requirements for relicensure. The Division or its designee may also require respondent to pass an examination related to the content of the program.

5. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

6. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

7. Respondent shall comply with the Division's probation surveillance program.

8. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

9. In the event respondent should leave California to reside or to practice outside the State, respondent must notify in writing the Division of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

10. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of the respondent's certificate. Upon successful completion of probation, respondent's certificate will be fully restored.

Dated: 6-15-81



ROBERT R. COFFMAN
Administrative Law Judge
Office of Administrative Hearings

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7

8 BEFORE THE
9 DIVISION OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation
Against:

12 JAMES WALKER GRAY, M.D.
13 License No. C-30715
P. O. Box 389
14 Tracy, California

15 Respondent.
16

No. D-2425

FIRST AMENDED
ACCUSATION

17 COMES NOW the complainant, Robert Rowland, and as
18 causes for disciplinary action against the above named respondent
19 alleges as follows:

20 I

21 Complainant Robert Rowland is the executive director
22 of the Board of Medical Quality Assurance of the State of
23 California (hereinafter referred to as "board"), and makes this
24 accusation solely in such official capacity.

25 II

26 On or about November 8, 1968, respondent James Walker
27 Gray was issued physician's and surgeon's certificate No. C-30715

1 by the board to practice medicine in the State of California.
2 At all times mentioned, respondent was and is a licensed
3 physician in the State of California. Respondent's official
4 address of record is P. O. Box 389, Tracy, California.

5 III

6 Business and Professions Code section 2360 (all further
7 code references are to the Business and Professions Code unless
8 otherwise specified) provides in pertinent part that every medical
9 certificate issued by the board may be suspended or revoked.

10 IV

11 Section 2361 provides that the board shall take
12 disciplinary action against any holder of a certificate, who is
13 guilty of unprofessional conduct. Unprofessional conduct
14 includes, but is not limited to, the following:

15 "(a) Violating or attempting to violate,
16 directly or indirectly, or assisting in or
17 abetting of violation of, or conspiring to
violate, any provision or term of this chapter."

18 V

19 Section 2390 provides that a physician's use, prescrip-
20 tion, or administration to himself of any of the controlled
21 substances specified in Schedule I of section 11054 or Schedule
22 II of section 11055, or any narcotic drugs specified in Schedule
23 III of section 11056, of the Health and Safety Code; or the use
24 of any of the dangerous drugs specified in section 4211 of the
25 Business and Professions Code, or of alcoholic beverages to the
26 extent, or in such a manner as to be dangerous or injurious to
27 a person holding a certificate, or to any other person or to the

1 public, or to the extent that such use impairs the ability of
2 such person so holding such certificate to conduct with safety
3 to the public the practice authorized by such certificate or
4 the conviction of more than one misdemeanor involving the use,
5 consumption or self-administration of any of the substances
6 referred to in this section or any combination thereof, consti-
7 tutes unprofessional conduct. The record of conviction is
8 conclusive evidence of such unprofessional conduct, and a plea
9 or verdict of "guilty" or a conviction following a plea of
10 nolo contendere is deemed to be a conviction within the meaning
11 of section 2390.

12 VI

13 Section 2391.5 provides that the violation of any
14 federal statute, or rule or regulation of any of the statutes
15 or rules or regulations of this state regarding narcotics,
16 dangerous drugs or controlled substances, constitutes unprofes-
17 sional conduct within the meaning of of section 2361.

18 VII

19 Section 11154 of the Health and Safety Code provides
20 that except in the regular practice of his profession, no person
21 shall prescribe, administer, dispense, or furnish a controlled
22 substance to or for any person who is not under his treatment
23 for a pathology or condition other than addiction to a controlled
24 substance, except as provided in this division (Div. 10, Uniform
25 Controlled Substances Act).

26 VIII

27 Section 11157 of the Health and Safety Code provides

1 that no person shall issue a prescription that is false or
2 fictitious in any respect.

3 IX

4 Section 11169 provides that when codeine, or dihydro-
5 codeinone or tincture opii camphorata (paregoric) is not combined
6 with other medicinal ingredients, it shall be prescribed on
7 official triplicate blanks.

8 X

9 Section 11170 of the Health and Safety Code provides
10 that no person shall prescribe, administer, or furnish a con-
11 trolled substance for himself.

12 XI

13 Section 11173 of the Health and Safety Code in pertinent
14 part provides that:

15 "(a) No person shall obtain or attempt to
16 obtain controlled substances, or procure or
17 attempt to procure the administration of
18 or prescription for controlled substances
(1) by fraud, deceit, misrepresentation, or
subterfuge; or (2) by the concealment of a
material fact.

19 "(b) No person shall make a false statement
20 in any prescription, order, report, or record,
required by this division."

21 XII

22 Section 11190 of the Health and Safety Code provides
23 that every practitioner, other than a pharmacist, who issues a
24 prescription, or dispenses or administers a controlled substance
25 classified in Schedule II shall make a record that, as to the
26 transaction, shows all of the following:

27 "(a) The name and address of the patient.

"(b) The date.

1 "(c) The character and quantity of the
2 controlled substances involved."

3 The prescriber's records shall show the pathology and
4 purpose for which the prescription is issued, or the controlled
5 substance administered, prescribed, or dispensed.

6 XIII

7 Section 11191 of the Health and Safety Code provides
8 that the record mentioned in section 11190 of the Health and
9 Safety Code shall be preserved for three years.

10 XIV

11 The following are dangerous drugs pursuant to Business
12 and Professions Code section 4211(k) and Schedule II Drugs
13 pursuant to Health and Safety Code section 11055:

- 14 1. Eskatrol
15 2. Paregoric
16 3. Morphine Sulphate

17 XV

18 The following are dangerous drugs pursuant to Business
19 and Professions Code section 4211(k) and are Schedule III Drugs
20 pursuant to Health and Safety Code section 11056:

- 21 1. Tylenol-Codeine
22 2. Tylenol IV

23 XVI

24 The following are dangerous drugs pursuant to Business
25 and Professions Code section 4211(k):

- 26 1. Lasix
27 2. Niptatin ointment

3. Kaopectate
4. Lotrimin cream
5. Pinactin cream
6. Tetracycline
7. ProPenicillin
8. Trobicin
9. Valium, also known as Diazepam

XVII

From August 1977 to September 1978 respondent James Walker Gray used, prescribed, and administered to himself the dangerous drug morphine sulphate. Respondent is therefore guilty of unprofessional conduct by the terms of section 2390. Respondent's license is therefore subject to discipline pursuant to the provisions of section 2361.

XVIII

From August of 1977 to September of 1978 respondent James Walker Gray used alcoholic beverages to the extent that he became a danger to himself and to other members of the public and to the extent that such use impaired his ability to conduct with safety to the public the practice authorized by his certificate. Respondent is therefore guilty of unprofessional conduct by the terms of section 2390. Respondent's license is therefore subject to discipline pursuant to the provisions of section 2361.

XIX

Respondent violated the following statutes regulating narcotics, dangerous drugs, and controlled substances within the State of California, and each separate allegation subjects

1 respondent to disciplinary action pursuant to sections 2391.5
2 and 2361(a):

3 1. Respondent violated Health and Safety Code
4 section 11154 in that at various times during the period from
5 February 10, 1978, through February 27, 1979, respondent wrote
6 a total of 23 prescriptions for dangerous drugs as defined in
7 paragraphs XIV, XV, and XVI above, for a person not under his
8 treatment for a pathology.

9 2. Respondent violated Health and Safety Code
10 section 11157 in that from February 10, 1978, to February 27,
11 1979, respondent issued 23 prescriptions that were false and/or
12 fictitious.

13 3. Respondent violated Health and Safety Code
14 section 11169 in that from February 10, 1978, to July 1, 1978,
15 he issued five prescriptions for paregoric that were not
16 prescribed and written on official triplicate blanks.

17 4. Respondent violated Health and Safety Code
18 section 11170 in that from February 10, 1978, to February 27,
19 1979, he prescribed, administered, and furnished controlled
20 substances for himself on 23 different occasions.

21 5. Respondent violated Health and Safety Code
22 section 11173(a) in that from February 10, 1978, to February 27,
23 1979, on 23 different occasions obtained controlled substances
24 by fraud, deceit, misrepresentation, subterfuge and/or by the
25 concealment of material facts.

26 6. Respondent violated Health and Safety Code
27 section 11173(b) in that from February 10, 1978, to February 27,

1 1979, he made false statements in prescriptions on 23 different
2 occasions.

3 7. Respondent violated Health and Safety Code
4 section 11190 in that during the period of February 10, 1978,
5 to February 27, 1979, he failed to make and keep records
6 regarding the 23 prescriptions mentioned in the above paragraphs.

7 8. Respondent violated Health and Safety Code
8 section 11191 in that he failed to preserve for three years the
9 records required by section 11190 mentioned in the preceding
10 paragraph.

11 XX

12 On the specific dates as set forth below respondent
13 James Walker Gray prescribed for himself and administered to
14 himself the following controlled substances and dangerous drugs,
15 all of which constitutes unprofessional conduct under section
16 2390 and subjects respondent's license to discipline pursuant
17 to the provisions of section 2361:

18	<u>Date</u>	<u>Rx #</u>	<u>Drug</u>	<u>Amount</u>
19	2/10/78	22318	Valium	10mgs., 100 each
20	2/10/78	22320	Tylenol #4	170 each
21	2/10/78	22319	Lasix	40mgs., 100 each
22	2/10/78	22321	Paregoric	No amount
23	4/4/78	22575	Paregoric	2oz., plus 16 oz.
24	4/24/78	22669	Paregoric	1 pt.
25	5/9/78	22777	Paregoric	1 pt.
26	7/1/78	23148	Paregoric	2 pt. Kaopectate w/this
27	7/2/78	23153	Niptatin Ointment	15 grains

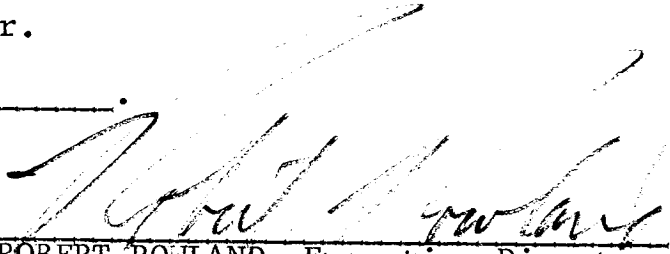
<u>Date</u>	<u>Rx #</u>	<u>Drug</u>	<u>Amount</u>
7/20/78	23149	Lasix	40mgs., 100 each
7/20/78	23150	Kaopectate	1 gallon
7/20/78	23151	Lotrimin Cream	1%, 15 grains
Undated	23152	Pinactin Cream	1oz., 15 grams
7/20/78	23154	Tetracycline	500mgs., #20
7/20/78	23156	Pro Penicillin	#6 Tubex
7/20/78	23155	Trobicin	4 grams
7/31/78	23157	Paregoric	2 pt.

WHEREFORE, complainant prays that the Division of Medical Quality hold a hearing on matters alleged herein and, following the hearing, issue a decision:

1. Revoking or suspending the certificate of respondent;

2. Taking such other and further action as the board deems necessary and proper.

DATED: November 6, 1980


 ROBERT ROWLAND, Executive Director
 Division of Medical Quality
 Board of Medical Quality Assurance
 Department of Consumer Affairs
 State of California

Complainant